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Item 6 – APS integrity

Action items:

- **Note** the update.

Handling notes:

s 34(3)

- You will then be asked to provide a brief update on the Royal Commission, including Commonwealth submissions and relevant notices.

s 47C(1), s 47E(c)

Sensitivities:

- The Notices of Potential Adverse findings issued by the Robodebt Royal Commission are subject to a non-publication direction.

Talking points

Commonwealth submissions

- The Commonwealth provided an initial submission to the Commission on 23 March 2023 on general legal principles.
 - This submission covered issues including the standard of proof, procedural fairness, jurisdiction, discharging the terms of reference and referral powers.
- The Commonwealth provided a further submission to the Commission on 6 April 2023.
 - This submission focussed on the Commonwealth's response to three expert reports tendered by the Royal Commission in Hearing Block 4.
- The Commonwealth's submissions did not otherwise engage with the detail of the evidence before the Royal Commission or themes arising, noting the short timeframe in which the Commonwealth was required to provide submissions and the whole of APS nature of the themes raised by the evidence.
- This approach was the subject of consultation across impacted agencies.
- It is expected that the Commonwealth's submissions will be published on the Royal Commission's website, although timing for this is unclear.

Post hearing arrangements

- The Royal Commission has held 9 weeks of hearings over four hearing blocks between October 2022 and March 2023, hearing from over 100 witnesses.
- Public hearings concluded on 10 March 2023, with Senior Counsel Assisting providing a closing statement.
- On 14 March 2023, the Royal Commission published a Practice Guideline setting out guidance on post-hearing arrangements, which was subsequently updated on 30 March 2023 (**Attachment A**).
- It set out the process by which the Commission will issue:
 - Notices of Potential Adverse Findings, and
 - Notices of Potential Referral pursuant to s 6P of the *Royal Commissions Act 1902* to individuals and organisations and provide an opportunity for response.

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Notices of Potential Adverse findings

- Notices of Potential Adverse findings give an affected party the opportunity to make submissions on the potential adverse finding.
- The Notices are subject to a non-publication direction. This means that the fact that a Notice has been issued to an individual and the contents of a Notice cannot be communicated to another party unless strictly necessary.
- The Commission's Practice Guideline provides that the Commonwealth will receive a copy of any Notices of Potential Adverse Finding that concern a current or former APS employee or Commonwealth statutory appointee.
- This is on the basis that the Commonwealth may have an interest in its own right in making submissions on the Notice.
- Where the Commonwealth has received a copy of a Notice, AGD has provided it to the relevant agency on the understanding that the distribution of the Notice is limited, for the purpose of their consideration of the written submissions the Commonwealth may make in response to the Notice.
- In the case where a witness has separate legal representation, the Royal Commission will send the Notice to the witness's lawyer.
- *[If asked about the number of notices/agencies who have received Notices:]* Noting the sensitivity of these Notices and the terms of the non-publication direction, I am not in a position to share any details about notices received.

Notices of Potential Referral

- Section 6P of the Royal Commissions Act provides that the Commissioner may refer or communicate with third parties in respect of a contravention of a law of the Commonwealth or a State or Territory. s 42(1)
- Like Notices of Potential Adverse Findings, the purpose of the Notices of Potential Referral is to give affected parties an opportunity to make submissions in response.
- Notices of Potential Referral are similarly subject to a non-publication direction.
- *[If asked about the number of notices/agencies who have received notices:]* Noting the sensitivity of these notices and the terms of the non-publication direction, I am not in a position to share any details about notices received.

s 47E(c)



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Government response

- The Royal Commission is due to report by 30 June 2023.
- It is usual practice to promptly table a report of a Royal Commission.
- There is no requirement for the Government to respond to a Royal Commission's report. Any response, and timeframe, is a matter for Government.
[If asked: which agency will lead the Government response?]
- Government responses to Royal Commission reports are usually coordinated by the lead subject-matter department.
- The content of the final report, and its recommendations, will inform considerations as to the most appropriate department to lead the Government response.

Background

s 47C(1), s 47E(c)

s 42(1)

s 47C(1), s 47E(c)

s 34(3)

Attachments

- **Attachment A** – Amended Practice Guideline – Post Hearing Arrangements – 30 March 2023.

Briefing provided by: Royal Commissions Branch (Robodebt team)

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Consultation: N/A

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AMENDED PRACTICE GUIDELINE - POST HEARING ARRANGEMENTS

Part A

Introductory matters

1. This Practice Guideline relates to the conduct of the Royal Commission into the Robodebt Scheme (the Commission). It should be read in conjunction with the *Royal Commissions Act 1902* (Cth) (Act) and the terms of reference contained in the Amended Letters Patent establishing the Royal Commission dated 16 February 2023.
2. This Practice Guideline provides guidance for parties about:
 - a. the production of further documents to the Commission;
 - b. engagement with the Commission in respect of notices of possible adverse findings issued by the Commission; and
 - c. engagement with the Commission in respect of notices of potential referral issued by the Commission pursuant to section 6P of the Act.
3. Where the Commission considers it appropriate, this Practice Guideline may at any time be varied, amended or replaced.

Part B

Providing post-hearing Submissions (Submissions) to the Commission

4. Unless otherwise agreed with the Solicitors Assisting the Commission, any Submission should be provided to the Commission by no later than 5.00pm on 6 April 2023.
5. Any document referenced in a Submission must be a document which has been tendered. Please include the Exhibit Number in the footnote of the Submission together with the Document ID in parentheses following the Exhibit Number.
6. A copy of each Submission is required to be produced in native electronic form (for example, in Microsoft Word format) with publicly available references to be hyperlinked either in the body of the Submission or the sub-folder (see below).
7. Each Submission must be accompanied by the following:
 - A sub-folder named "*Documents referred to in the Report/Submission of [name of author] and [date]*". The sub-folder must contain all documents referenced within the Submission which are not publicly available in a



format that complies with the Document Management Protocol. This folder should not include a copy of the Submission.

Part C

Notice of Potential Adverse Findings

8. Subject to any confidentiality order to contrary effect, Solicitors Assisting the Commission will give to any person/organisation who/that might be adversely affected (through their legal representative or nominated agent) (**Affected Party**) notice of potential adverse findings as soon as practicable, drawing their attention to the evidence which might be adverse to them (**Notices of Potential Adverse Findings**).
9. The Commission will endeavour to give 24 hours' notice to any Affected Party to whom it proposes to issue a Notice of Potential Adverse Findings.
10. Notices of Potential Adverse Findings will be provided subject to non-publication orders.
11. All Notices of Potential Adverse Findings concerning an Affected Party who is a current or former APS Employee or Commonwealth Statutory Appointee will be issued to the Affected Party and to the Commonwealth.
12. An Affected Party will be given an opportunity to file written submissions specifying the factual matters in the Notice of Potential Adverse Findings which are disputed and why and any other submissions they wish to provide in respect of that matter (Responses to Notices of Potential Adverse Findings), with reference to any exhibits in support of their account with respect to those disputed matters. An Affected Party will be advised by the Commission at the time a Notice of Potential Adverse Findings issued to them of the due date for such submissions (the **Submissions Due Date**).
13. Should the Commission not receive by **5.00pm (AEST)** on the Submissions Due Date, a Response to a Notice of Potential Adverse Findings, the Commission will proceed to make findings on the available evidence.
14. In the absence of extenuating circumstances, any Affected Party seeking an extension to the Submissions Due Date is required to provide notice to the Commission, together with reasons for any extension request, by **no later than 2**



business days prior to the Submissions Due Date. It should not be assumed that extensions to the Submissions Due Date will be granted without adequate reasons. The Commission will advise the Affected Party in writing of its decision on the extension request.

Notice of Potential Referral pursuant to s 6P of the *Royal Commission Act 1902 (Cth)*

15. The Royal Commission may refer or communicate with third parties in respect of a contravention of a law of the Commonwealth or a State or Territory (see s 6P of the Act) (**Referral**). Subject to any confidentiality order to contrary effect, Solicitors Assisting the Commission may give to an Affected Party notice of a potential Referral (**Notices of Potential Referral**).
16. The Commission will endeavour to give any Affected Party to whom it proposes to issue a Notice of Potential Referral, 24 hours' notice.
17. Notices of Potential Referral will be provided subject to non-publication orders.
18. The Notice of Potential Referral will advise the Affected Party of any opportunity to file written submissions they wish to provide in respect of that matter (**Response to a Notice of Potential Referral**). An Affected Party will be advised by the Commission at the time a Notice of Potential Referral issued to them, of the due date for such submissions (the **Response Due Date**).
19. Should the Commission not receive by **5.00pm (AEST)** on the Response Due Date, a Response to a Notice of Potential Referral, the Commission will proceed to make a decision on the potential referral or communication based on the available evidence.
20. In the absence of extenuating circumstances, any Affected Party seeking an extension to the Response Due Date is required to provide notice to the Commission, together with reasons for any extension request by **no later than 2 business days** prior to the Response Due Date. It should not be assumed that extensions to the Response Due Date will be granted without adequate reasons. The Commission will advise the Affected Party in writing of its decision on the extension request.



General

21. The Commission may issue more than one Notice of Potential Adverse Findings or Notice of Potential Referral to an Affected Party.
22. In light of the limited time available to the Commission to report to the Commonwealth Government (the **Final Report**), it is not presently proposed that further hearings be conducted in respect of factual matters which are disputed.

DATED 30 March 2023